In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:	)	
	)	Chapter 13 Case
JOHN C. BRUNNER, JR.	)	
HOPE BRUNNER	)	Number 97-20054
	)	
Debtors	)	

ORDER ON OBJECTION TO CONFIRMATION

Debtors' case was filed on January 14, 1997, and a modified Chapter 13 Plan was filed February 10, 1997. Within the modified plan, Debtors propose to pay $292.00 bi-weekly. They valued a mobile home pledged to South Trust Bank at $13,391.00 and propose to pay the secured portion of the South Trust Bank claim with interest by virtue of disbursements from the Chapter 13 Trustee rather than by maintaining their monthly repayment obligations. Evidence revealed that the full amount of the South Trust Bank claim is $18,348.38 and that the monthly payments on the account are $216.01 principal and interest.

First Franklin Financial, an unsecured creditor in the case, objected to confirmation based on this treatment of the South Trust claim alleging that the decision to value the collateral and pay the secured claim with interest over the five-year period via disbursements from the Trustee would result in payments of approximately $316.00 per month to South Trust, in contrast the contractual monthly payment of $216.00 per month if the Debtors simply maintained payments on a direct pay basis and cured any arrearage through disbursements from the Trustee pursuant to 11 U.S.C. Section 1322(b)(5).

First Franklin argues that by failing to propose a plan that merely maintains regular payments, even though the Debtors would pay substantially more to the creditor whose payment schedule does not mature until April 2009, Debtors are diverting $100.00 per month from unsecured creditors, including First Franklin, which constitutes bad faith under this Court's decision of In re Harris, Ch. 13 Case No. 96-20116, slip op. (Bankr.S.D.Ga., Sept. 3, 1996) (Davis, J.). In Harris the debtor's long-term direct pay obligation was $265.00 per month. Their plan proposed to pay the obligation at an accelerated rate of payment by disbursements from the Trustee. The effect was to divert approximately $32.00 per month in payments, which would otherwise go to unsecured creditors, to the secured lender in order to pay the obligation off at an accelerated rate within five years. In Harris, however, debtors had proposed no valuation of the secured lender's collateral. The single issue was whether they would be permitted to modify an obligation which extended beyond 60 months by paying if off quicker with the result that unsecured creditors would receive less.

In the case before me, a substantial distinguishing feature exists. The Debtors' obligation of $18,348.38 is secured by collateral which the Debtors have valued at $13,391.00 or seventy-three percent of the amount of the secured creditor's claim. The secured creditor did not object to this valuation and, therefore, the Court must conclude that it is in fact the fair market value of South Trust Bank's collateral. Of course, pursuant to the Code, Debtors have the option of maintaining these payments by tendering $216.01 per month to the creditor for the full five-year period of their plan and continuing to make payments of $216.01 per month until the year 2009. However, in contrast to Harris, because the collateral pledged to South Trust is worth substantially less than the obligation, they instead propose in their plan to value the property and pay off the reduced secured claim within a period of five years pursuant to 11 U.S.C. Section 1322(b)(2).

Thus, the issue presented is whether Debtor's proposal to value and fund a secured obligation within the five-year plan period, to the detriment of unsecured creditors, is in good faith.

While this case has the same effect, as in Harris, of reducing the money that will be remitted to unsecured creditors, I find that the plan is not proposed in bad faith. The determination of whether a debtor's plan is proposed in bad faith requires an examination of the totality of the circumstances. *See* In re Phoenix Piccadilly, Ltd., 849 F.2d 1393, 1394 (11th Cir. 1988) ("there is no particular test for determining whether a debtor has filed a petition in bad faith"); *See* In re Kitchens, 702 F.2d 885 (11th Cir. 1983). In Harris I concluded that the sole rationale for the debtor's accelerating repayment of the obligation was to redirect money away from unsecured creditors and towards a secured creditor in order to benefit the debtors. In the case under consideration, that motivation also exists. However, it is not the sole factor driving the Debtors' decision to file their present modified plan. Instead, an additional motivation is that the collateral is undisputedly worth substantially less than the amount of the secured claim - a figure which I have calculated to be approximately seventy-three lower. Accordingly, the Debtors are motivated not only by the factors which I found to be evidence of bad faith in Harris, but by the fact that the secured collateral, as of the date of filing, was not worth one hundred percent of the amount of the remaining obligation to South Trust.

The Bankruptcy Code clearly provides debtors with an avenue in Section 1322 to value such claims. Section 1322, however, does not permit debtors to value collateral and still maintain the original maturity date on an obligation which is being modified. In other words, if a secured claim is being modified under Section 1322, the debtors have the right either (1) to cure any default and maintain payments over a long-term period or (2) to value the collateral and pay it off within the three to five-year term of the plan,[1] but do not have the option to do both. Because the modified plan both accelerates the repayment term and substantially modifies the secured claim by valuation.

[1] The secured creditor did not claim that Section 1322(b)(2) prohibits modification.

I find that the Debtors' plan was not proposed in bad faith.

It should be made clear that an effort to only nominally reduce the value of collateral securing a claim would not be approved by this Court and would constitute a bad faith proposal much as was the case in Harris, but because of the substantiality of the undisputed reduction in value of collateral and because the Bankruptcy Code clearly contemplates that debtors should be permitted to bifurcate the claims of undersecured creditors, I find this plan to be proposed in good faith.

IT IS THEREFORE THE ORDER OF THIS COURT that the objection to confirmation is overruled and the plan is modified as confirmed.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of July, 1997.